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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	Case No. CR-17-0387-CRB-1
	)	
Plaintiff,	)	UNITED STATES' REPLY TO DEFENDANT'S
	)	SENTENCING MEMORANDUM
v.	)	
	)	
AMER SINAN ALHAGGAGI,	)	
	)	
Defendant.	)	
	)	

The government, having reviewed the defendant's sentencing memorandum, hereby files this reply.

The overarching theme of the defendant's plea for leniency is that all of his actions were a joke, a lark, and that he should never have been taken seriously. These explanations are patently false. Apparently, having engaged in fraud and deception as a means of survival for virtually his entire adult life, the defendant now seeks to do the same before this Court. He will say anything to hide from the Court what he truly is: a violent threat to the community, whose imagination and appetite for evil knows no bounds.

Particularly deceptive is the narrative pressed by the defendant that he is a peaceful person who,

as one of his acquaintances wrote, would not hurt a fly. Def. Sentencing Memorandum Exhibit B at pg. 13. This description is entirely incompatible with the materials recovered on the defendant's electronic devices. For example, as described in the government's sentencing memorandum, when the defendant's residence was searched, agents seized a 64 GB microSD card from a camera that the defendant's brother was apparently trying to remove from the scene of the search. Gov. Sentencing Memorandum at pg. 36. On the SD card was, among other things, a copy of issue number 8 of ISIS's Dabiq Magazine. This "magazine" is universally recognized as an official tool of ISIL's propaganda machine. *See Fields v. Twitter*, 881 F.3d 739, 741 (9th Cir. 2018)(noting that ISIL claimed responsibility for killing two American nationals by publishing a statement in an issue of its magazine, Dabiq); *see also* "The Apocalyptic Magazine the Islamic State Uses To Recruit And Radicalize Foreigners," by Terrence McCoy, *Washington Post*, September 16, 2014, available at [https://www.washingtonpost.com/news/morning-mix/wp/2014/09/16/the-apocalyptic-magazine-the-islamic-state-uses-to-recruit-and-radicalize-foreigners/?utm\\_term=.079c61ad48c3](https://www.washingtonpost.com/news/morning-mix/wp/2014/09/16/the-apocalyptic-magazine-the-islamic-state-uses-to-recruit-and-radicalize-foreigners/?utm_term=.079c61ad48c3) (last accessed December 10, 2018).

Issue Number 8, found on the defendant's SD card, is particularly vile, grotesque, and reprehensible. Among other things, it features a full-page photograph of an armed child soldier in camouflage, holding a pistol in one hand. At the child's feet is a dead man with a bloodied face who appears to have been shot in the head, presumably executed by the child soldier. The caption on the photograph reads "The Lions of Tomorrow."<sup>1</sup> The description to the photograph explains "as the *mujahidin* of the Islamic State continue their march against the forces of *kufir* [non-believers of Islam] there is a new generation waiting in the wings." The description goes on to say that "it is these young lions<sup>2</sup> to whom the Islamic State recently handed over two agents caught spying for Russian Intelligence and an agent caught spying for the Israeli Mossad, to be executed and displayed as an example to anyone else thinking of infiltrating the *mujahidin*." A full copy of Issue 8 of Dabiq is attached as sealed Exhibit 1 to this reply. Perhaps not surprisingly, the defendant did not mention his possession of this

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<sup>1</sup> It should be noted that one of the online handles that ALHAGGAGI used to identify himself on encrypted messaging applications was *قُسُورَة*, which loosely translates as "lion."

<sup>2</sup> See fn. 1, *supra* – one of ALHAGGAGI's online handles was an Arabic word for "lion".

1 “magazine” in his statement to the Court, in his statements to Probation, or in his statements to the  
2 defense experts who interviewed him.

3 Particularly telling is the fact that agents recovered the copy of this “magazine” not on the  
4 defendant’s telephone, or computer, or any of the devices on which he admits using encrypted  
5 messaging applications, but on a removable SD card. That means that even if one were to believe  
6 ALHAGGAGI’s nonsensical story that he unwittingly downloaded ISIS materials by mistake when he  
7 used encrypted messaging applications<sup>3</sup>, a story that is incredulous on its face,<sup>4</sup> he cannot possibly have  
8 then accidentally saved a copy of Dabiq on the SD card. More alarming is what *else* was found on that  
9 SD card, along with Issue 8 of Dabiq: ALHAGGAGI’s suicide note, in which he described in detail the  
10 multiple attacks he wanted to carry out in the Bay Area. See Gov. Sentencing Memo. At pg. 36-37.

11 This brings the government to the explanation the defendant provided to defense experts about  
12 that suicide note, an explanation that would be laughable, if not for the fact that the attacks  
13 ALHAGGAGI contemplated in his suicide note are so horrific. According to defense expert Dr. Marc,  
14 Sageman ALHAGGAGI told him that “one time, on a chat group sympathetic to the Islamic State, *out of*  
15 *curiosity*, [ALHAGGAGI] asked how to make bombs.” Def. Exhibit C, Sageman Report at pg. 9  
16 (emphasis added). That statement, in and of itself, could hardly be more ridiculous. Imagine a  
17 defendant coming before this Court and saying, “one time, on a chat group sympathetic to al-Qaeda, *out*  
18 *of curiosity*, I asked how to hijack an airplane,” or “one time, on a chat group sympathetic to Timothy  
19 McVeigh and the Oklahoma City bombers, *out of curiosity*, I asked how to blow up a federal building.”  
20 Nonetheless, ALHAGGAGI’s deceit continued. ALHAGGAGI explained to Sageman that after being  
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22 <sup>3</sup> See, e.g., Def. Exhibit C, Sageman Report, at pg. 9 (suggesting that ALHAGGAGI accessed a  
23 Telegram channel called “Science of Explosives,” causing an ISIS bomb-making manual to be  
24 “automatically” downloaded to his computer. See also Def. Exhibit C, Sageman Report at Pg. 15,  
suggesting that ALHAGGAGI was “surprised” that due to a default feature on Telegram ALHAGGAGI  
had inadvertently downloaded thousands of *jihadi* propaganda materials.

25 <sup>4</sup> The defendant goes to great lengths in his statement to the Court and his statements to defense  
26 experts to explain how encrypted messaging applications work, describing how he used some of their  
27 most complex features and functions. He then turns around and suggests he had no idea that encrypted  
28 messaging applications were “automatically” downloading vast quantities of ISIS materials. The fact  
that he presents himself alternatively as both an expert on encrypted messaging applications and a  
complete novice is further proof that the defendant will say anything, truthful or not, to this Court to  
bolster his plea for leniency.

introduced through several different people, he encountered a “person” online who could give ALHAGGAGI the bomb manual he sought, but only if ALHAGGAGI explained how he was going to use it. The “person” then asked ALHAGGAGI to write a statement, which ALHAGGAGI did. Def. Exhibit C, Sageman Report at pg. 9. Missing in the defendant’s explanation is the obvious, critical, and deeply troubling inference: the “person” to whom ALHAGGAGI was not someone working for the government; instead, it was *an actual member of ISIS, from whom ALHAGGAGI had just knowingly and willingly requested instructions on how to make a bomb.*<sup>5</sup>

ALHAGGAGI’s lies to his defense experts continued. Dr. Sageman writes that “[ALHAGGAGI] knew that strychnine was a rodent poison... [but] the talk about strychnine was just to impress his interlocutor and he never made any attempt to procure it.” *Id.* This was a bald-faced lie. Included in the government’s sentencing memorandum is a screenshot of a conversation that ALHAGGAGI had with someone on the website Alibaba.com, in which ALHAGGAGI was attempting to procure strychnine. *See* Gov. Sentencing Memo, Exhibit 1 at pg. 82, Bates US-007632

Still, ALHAGGAGI’s lies to his defense experts continued. Dr. Sageman writes that the suicide note “did not satisfy the person [i.e., the ISIS operative ALHAGGAGI was talking to],” who “asked Mr. Alhaggagi to make a video pledging baya [allegiance, in Arabic] to the Islamic State. Mr. Alhaggagi had no desire to do so, stopped talking to this individual, and never got the manual.” This was a lie. The manual was recovered from ALHAGGAGI’s electronic devices. It was attached as sealed Exhibit 3 to the Government’s Sentencing Memorandum.

The suicide note, and ALHAGGAGI’s incredulous explanation for it, highlights the absurdity of his narrative that this was all just a misinterpreted bad joke. If ALHAGGAGI was truly joking about causing mass murder and destruction in San Francisco, why write a suicide note? What possible

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<sup>5</sup> This leads to yet another distortion of the truth that ALHAGGAGI wants this Court to adopt – that this was some sort of FBI “sting” operation, led by a wily undercover agent seeking to ensnare an unsuspecting youth. Def. Sentencing Memorandum at pg. 2. This is false. The FBI began its investigation into ALHAGGAGI only after learning that ALHAGGAGI had made threats to attack the Bay Area, and boasted of having obtained a bomb manual from the “brothers” in ISIS, which, in fact, he had. That the FBI was able not only to identify ALHAGGAGI so quickly after his first nightclub bombing threats, but to successfully insert an undercover agent to thwart his plans was not an “elaborate sting operation” – it was outstanding police work.

1 purpose could the note serve if he were truly just an online prankster? And why preserve it, on an SD  
2 card no less, separate and apart from the rest of his electronic devices? There is no credible explanation,  
3 other than that ALHAGGAGI was seriously contemplating carrying out the attacks he wrote about.

4 Then there is the matter of firearms. If ALHAGGAGI was just a playful online troll, as he  
5 would have this Court believe, why carry a gun, and why take it to meet the FBI UCE? Interestingly,  
6 lost in ALHAGGAGI's tortured explanation for how he temporarily borrowed the gun from a friend is  
7 the fact that agents were able to identify the gun's serial number and trace it. (Recall that  
8 ALHAGGAGI sent a picture of the same gun to the FBI Source and then exclaimed to the FBI Source,  
9 "this is gonna be for the mini missions. Ima put a silencer on it.... Man I'mn gonna kill half of the ppl  
10 on my neighborhood just because." Exhibit 1 to Gov. Sentencing Memorandum at pg. 181, Bates US-  
11 007731. Unbeknownst to ALHAGGAGI, agents were able to identify a serial number from that  
12 photograph). Agents determined that the gun is registered neither to ALHAGGAGI, nor to anyone he  
13 has identified as a friend. Rather, the gun was purchased by an unrelated individual in Indiana who  
14 appears to have no connection whatsoever to ALHAGGAGI. ALHAGGAGI's ability to obtain this gun  
15 was, and remains, deeply troubling to investigating agents – if he could, as he bragged, obtain firearms  
16 at will, then there is no telling what other, *more* dangerous weapons he may be able obtain, particularly  
17 given his ability to steal identities.

18 While on the topic of stolen identities, if ALHAGGAGI's story is to be believed, why did he  
19 have a telephone subscribed in a false name? Why did he have a California driver's license bearing his  
20 photograph but the name of another? If he were just an online troll, he would have no use for either.  
21 Moreover, his explanation for how he came to engage in identity theft is entirely unbelievable. He  
22 claims to the Court that he simply took credit card information from customers at a Boost Mobile store  
23 where he worked. Def. Sentencing Memorandum Exhibit A at pg. 1. With this explanation, he is  
24 concealing from this Court the true depth of his identity theft conduct. In fact, as the government  
25 described in its sentencing memorandum, ALHAGGAGI's electronic devices revealed, among other  
26 things, that he was perusing webpages where credit card information was being traded, and blank  
27 passports and driver's licenses were on offer. Gov. Sentencing Memorandum at pg. 47-48.

1 ALHAGGAGI also offers no explanation whatsoever for how he ended up with not just a fake credit  
2 card but what appeared to be a legitimate California identification for Victim #1. Notably, Victim #1's  
3 credit card statements show no activity at any Boost Mobile stores prior to Victim #1 reporting  
4 fraudulent activity on his/her card. In other words, ALHAGGAGI is lying about to the Court about how  
5 he obtained false credit cards, and has provided no explanation whatsoever as to how he obtained false  
6 identifications.

7 Perhaps most troubling, ALHAGGAGI minimizes his description of his conduct on encrypted  
8 messaging applications. If he is to be believed, his activity was limited to simply reporting some encrypted  
9 messaging application users for abuse, and responding to reports of abuse by other users, and then  
10 opening a few social media and email accounts for people who were by chance members of ISIS. He  
11 makes no mention of the fact that, among other things, he posted instructions on encrypted messaging  
12 applications on how to make napalm and chloroform. Alarming, he posted these instructions shortly  
13 after posting the text of a letter apparently from the Oakland Police Department, apparently bragging to  
14 his online community, many of whom were ISIS members, that he had been selected to interview for a  
15 position as a "cyber security specialist." Sealed Exhibit 2. (Recall that one of the ways agents were able  
16 to identify ALHAGGAGI in the first place was that he boasted to the FBI Source that he had recently  
17 applied for a job with a local police department, so that he would have greater access to weapons. Gov.  
18 Sentencing Memorandum at pg. 11-12.) The instruction ALHAGGAGI posted on making chloroform  
19 specifically noted the size of doses that would be necessary to kill humans. Moreover, among the many,  
20 many videos in ALHAGGAGI's feeds on encrypted messaging applications, agents followed links for  
21 two in particular – one led to what appeared to be a training video for online ISIL supporters to assist in  
22 practice for cyber operations, online anonymization, use of Proxy servers, and tips and tricks for using  
23 TOR, Orbot, Twitter, and VPNs to disguise one's online persona. Exhibit 3. The other led to a video of  
24 a man whose face was hidden by a black hood, giving a lesson in Arabic in front of a whiteboard on  
25 what appeared to be the explosive qualities of nitric acid, among other things. Sealed Exhibit 4, Exhibit  
26 5. In short, ALHAGGAGI's online activities were not those of a peaceful man who would never hurt a  
27 fly. They were the activities of a man obsessed with finding ways to cause mass death and destruction.

1 Finally, the government reiterates that the Probation Office and the defense have plainly  
2 miscalculated the applicable guidelines. There can be no doubt whatsoever that the terrorism  
3 enhancement in U.S.S.G. § 3A1.4 applies in this case, given the nature not only of the charged conduct,  
4 i.e. opening social media and communications accounts online on behalf of ISIL, but also the relevant  
5 conduct, i.e., the multiple attacks ALHAGGAGI contemplated committing around the Bay Area in the  
6 name of ISIL, before suspecting that the FBI UCE was a law enforcement officer. The defendant does  
7 not cite to, and the government has not been able to identify, a single case with even somewhat similar  
8 facts where the enhancement was *not* applied. To the contrary, it appears that in virtually every case in  
9 which a defendant has been convicted of 18 U.S.C. § 2339b, courts have applied the terrorism  
10 enhancement. If the Court were to fail to do so here, it would be sailing deep into uncharted territory.  
11 Notably, even the case cited by the defendant, *United States v. Natsheh*, applied the terrorism  
12 enhancement, arriving at an offense level 37 and a Criminal History Category of VI. Sentencing  
13 Transcript, pg. 3, Docket No. 26, July 24, 2017, in *United States v. Natsheh*, Cr-16-0166-RS.

14 Speaking of *Natsheh*, the defendant's sentencing memorandum points out precisely why *Natsheh*  
15 is entirely inapposite. The defendant boldly claims that he "rejected the opportunity to engage in a  
16 violent act." But that is plainly not true. It is precisely *because* he wanted the opportunity to engage in  
17 a violent act that this whole case started. But for ALHAGGAGI describing to the FBI Source online his  
18 vile plans to bomb gay nightclubs, light fires in residential areas of the Berkeley Hills, and lay backpack  
19 bombs around crowded areas of San Francisco and Oakland, he may never have shown up on the FBI's  
20 radar. Moreover, the defendant in his sentencing memorandum makes the bizarre argument that a  
21 "traveler" who is leaving the United States to join a terrorist organization is less dangerous and deserves  
22 less of a sentence than someone seeking to engage in terrorism inside the United States. This makes no  
23 sense whatsoever. Comparing ALHAGGAGI to the so-called "traveler" cases is comparing apples to  
24 oranges. ALHAGGAGI's scenario is far more dangerous.

25 A more compelling starting point is a recent case in the Eastern District of California, *United*  
26 *States v. Jameson*, 18-CR-00001-LJO. There, the defendant was approached by undercover agents to  
27 carry out an attack on San Francisco's Pier 39 over the holiday season. The defendant pled guilty and  
28



1 was sentenced to 15 years. The facts against ALHAGGAGI are far more damning, though. For starters,  
2 in the *Jameson* case, there is no evidence that the defendant ever had any actual contact with members  
3 of ISIS. Rather, he was simply approached by undercover agents after having “liked” some pro-ISIS  
4 Facebook pages. Plea Agreement, Docket No. 22, June 4, 2018, in *United States v. Jameson*, CR-18-  
5 00001-LJO. In other words, the *Jameson* case involved precisely the type of “sting” operation criticized  
6 by the defendant, yet he still got 15 years. In comparison, in this case, ALHAGGAGI had apparently  
7 significant online contact with *actual* ISIL members, obtaining a bomb manual from them. Add onto  
8 that the fact that the attacks he plotted were particularly heinous, such as planting bomb at a gay  
9 nightclub in San Francisco, and then identifying routes that first responders would take to respond to  
10 victims, to kill them too. After suspecting (correctly) that his overly cautious, paranoid bombmaker was  
11 in fact an undercover agent, ALHAGGAGI went *back* online to reconnect with people from ISIL, this  
12 time successfully helping them to open social media and communications accounts. ALHAGGAGI  
13 even contemplated leaving the United States after any attacks he committed, to join ISIL in Syria,  
14 perhaps stopping in Dubai on the way to conduct another attack. On top of all of this, ALHAGGAGI  
15 engaged in constant identity theft. In other words, ALHAGGAGI’s conduct far, far exceeded that of the  
16 defendant in *Jameson*.

17       Then, there is the post-arrest conduct. The defendant in his sentencing memorandum seems  
18 offended that the government bothered to notify Probation of the existence of its jailhouse informants  
19 (there were two, not one, as the defendant suggests) and the substance of the information they provided  
20 about ALHAGGAGI’s statements while in custody. Indeed, the defense asks the Court to strike the  
21 information entirely from its consideration, implying that it was wrong for the government to alert  
22 Probation and the Court of it. With respect, had the government failed to bring this information to light,  
23 it would likely have been guilty of gross incompetence in representing its client, not to mention a failure  
24 of duty of candor to the Court. The Court would be well within its discretion to deny the defendant any  
25 acceptance of responsibility based on the informants’ information. See Application Note 3 to U.S.S.G.  
26 3E1.1 (noting that evidence of acceptance of responsibility may be outweighed by conduct of the  
27 defendant that is inconsistent with such acceptance of responsibility.”) Having now read and digested  
28



1 the defendant's explanations for his conduct, and having outlined the multiple lies that he told to  
2 Probation, his defense experts, and now this Court, the government remains firmly convinced that the  
3 defendant's acceptance of responsibility is anything but genuine.

4 For all of the reasons discussed above, and for the reasons set forth in the government sentencing  
5 memorandum, the government calculates the guideline range at 360-564 months, and recommends a  
6 mid-range guideline sentence of 396 months, followed by life on supervised release, a low-end fine of  
7 \$50,000, restitution in the amount of \$5,273.10, forfeiture, and a special assessment of \$400.

8  
9 DATED: December 10, 2018

Respectfully submitted,

10 ALEX G. TSE  
Acting United States Attorney

11 \_\_\_\_\_  
12 /s/  
S. WAQAR HASIB  
Assistant United States Attorney

**EXHIBIT 1**

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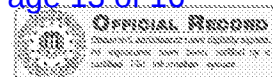
**EXHIBIT 2**

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**EXHIBIT 3**

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## FEDERAL BUREAU OF INVESTIGATION

Date of entry 01/05/2017

On 01/05/2017, Special Agent (SA) Matt Kotowski asked SA Greg Wuthrich to assist in reviewing and capturing a video posted online in regards to the ALHAGGAGI investigation. SA Kotowski, while reviewing ALHAGGAGI's phone, and in particular, in his encrypted chats inside the phone found the following URL link:

https://[REDACTED]

SA Kotowski also provided the following links, which when viewed all still were active links and all reflected back to the same video which was already collected from the first provided link:

https://[REDACTED]

https://[REDACTED]

https://[REDACTED]

**ONLINE ACTIVITY**

On 01/05/2017, SA Greg Wuthrich logged onto a unattributable computer and reviewed the aforementioned link(s). As of 2:55pm EST, the links were still active, and SA Wuthrich saved the video for evidentiary value.

The video appears to be a training video for online ISIL supporters to assist in practice for cyber Operational Security (OPSEC), online anonymization, Proxy server information, and online safety practices. It appears to show tips and tricks for TOR, Orbot, Twitter, and VPN usage.

The video shows clips of US military, President Obama, FBI Evidence Recovery working in Atlanta, and ISIL propaganda videos towards the last few minutes.

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Investigation on 01/05/2017 at Oakland, California, United States (, Other (To document the online activities for 01/05/2017))

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File # [REDACTED] Date drafted 01/05/2017

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by Gregory P. Wuthrich

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**EXHIBIT 4**

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**EXHIBIT 5**

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